

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BELGRADE PRIORITY

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E.O. 11652:N/A

TAGS: CGEN

SUBJECT: JUDICIAL SERVICE: DEPOSITIONS

REF: BELGRADE 7939

1. ON 10/17/38, BY NOTE VERBALE, U.S. LEGATION PROPOSED RECIPROCAL ARRANGEMENT PERMITTING CONOFFS OF "(EITHER) COUNTRY TO TAKE THE TESTIMONY OF THE PERSONS CONCERNED OR OF THE WITNESSES, REGARDLESS OF THEIR NATIONALITY AND WITHOUT THE NECESSITY OF MAKING ANY SPECIAL REQUEST TO THE AUTHORITIES OF THE COUNTRY IN WHICH SUCH TESTIMONY IS TAKEN." ON 10/28/38, MFA REPLIED THAT RYG HAD NO OBJECTION TO THE PROPOSED PROCEDURE ("N'A PAS D'OBJECTIONS A FAIRE A CE QUE LES FONCTIONNAIRES CONSULAIRES . . . RECOIVENT LES DEPOSITIONS DE PERSONNES RESIDANTES EN YUGOSLAVIE . . ."). TEXT OF NOTES PRINTED AT 12 BEVANS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE U.S. 1776-1949, P. 1261.

2. IN NOTE DATED 3/25/47, EMBASSY ASKED SSFA IF LATTER HAD ANY OBJECTION TO TAKING OF DEPOSITION BY CONOFF UNDER COMMISSION ISSUED BY COURT WITH COUNSEL FOR BOTH SIDES
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PRESENT. ON 4/1/47, BY NOTE NO. 45568, SSFA INDICATE THAT

"ANY JUDICIAL ACTION TAKEN ON THE TERRITORY OF A STATE BY A FOREIGN OFFICIAL WOULD APPEAR A NEGATION OF ITS SOVEREIGNTY AND BE, AT THE SAME TIME, AGAINST INTERNATIONAL PROVISIONS AS TO MUTUAL ASSISTANCE BETWEEN COURTS OF DIFFERENT STATES. "ACCORDINGLY, SHOULD A UNITED STATES COURT NEED DEPOSITIONS TO BE TAKEN IN YUGOSLAVIA, AN APPROPRIATE REQUEST SHOULD BE FORWARDED THROUGH THE (SSFA) TO THE YUGOSLAV JUDICIAL AUTHORITIES COMPETENT FOR SUCH AN ACTION." (COPIES OF NOTES ENCLOSED WITH EMBASSY'S DESPATCH NO 470, 12/9/47). -

3. DEPT INITIALLY CONSIDERED THAT 1947 NOTE NULLIFIED 1938 AGREEMENT AND SOUGHT TO REMEDY SITUATION WITH NEW EXCHANGE OF NOTES (REF ASSORTED CORRESPONDENCE BETWEEN DEPT AND EMBASSY 1951-1955). IN 1965, EMBASSY AGAIN PROPOSED RECIPROCAL PERMISSION FOR TAKING OF DEPOSITIONS BY CONOFF AND BY 1970 RECEIVED FAVORABLE RESPONSE. BELGRADE'S A-26, 1/17/70. BY JUNE, 1970, DEPT HAD COMPLETED CIRCULAR 175 PROCEDURE WHICH WAS NECESSARY BEFORE EXCHANGE OF NOTES COULD BE EFFECTED. SEE 70 STATE 91251.

4. NEXT MENTION IN DEPT FILES OF STATUS OF PROPOSAL IS MEMCON OF 2/23/71 MEETING BETWEEN EMBOFFS MILES AND CONGDON, AND SSFA LEGAL COUNSELOR AND AMERICAN SECTION CHIEF BATAVELJIC AND SARENAC. "BATAVELJIC STATED THAT APPROVAL SHOULD BE FORTHCOMING SHORTLY, THAT THE MATTER HAD BEEN BEFORE THE APPROPRIATE AUTHORITIES OF THE FEDERAL EXECUTIVE COUNCIL FOR SOME TIME, BUT THAT NO RESPONSE HAD BEEN RECEIVED DUE TO THE PRESENT CONCENTRATION OF THESE AUTHORITIES ON THE PROPOSED CONSTITUTIONAL REFORMS. . . . BATAVELJIC AGREED TO PROD THE HIGHER-UPS TO MOVE THE PROPOSAL ALONG." - -

5. ACCORDING TO MEMO SENT WITH BELGRADE'S 73 A-243 OF 4/26/73, EMBOFF AGAIN BROUGHT UP MATTER WITH BATAVELJIC ON 2/7/73, AT WHICH TIME HE SAID HE THOUGHT THAT 1938 AGREEMENT WAS STILL IN FORCE BECAUSE IT WAS STILL LISTED IN DEPT PUBLICATION "TREATIES IN FORCE". HOWEVER, AT A LATER MEETING, BATAVELJIC APPEARED TO HAVE RETREATED FROM THIS LIMITED OFFICIAL USE

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POSITION. THEREAFTER, DEPT'S FILES DO NOT MENTION EXCHANGE OF NOTES, AND EMBASSY APPEARS TO HAVE CONSISTENTLY ADVISED ATTORNEYS IN U.S. THAT YUGOSLAV LAW PRECLUDED TAKING OF DEPOSITIONS.

6. FYI: ALTHOUGH DEPT'S ACTIONS BETWEEN 1947 AND 1973 COULD BE CONSTRUED AS HAVING TREATED 1938 AGREEMENT AS LAPSED, DEPT CONTINUE TO LIST IT IN "TREATIES IN FORCE"

UNTIL 1970. ON 6/4/69 OFFICE OF ASSISTANT LEGAL ADVISOR

FOR TREATY AFFAIRS INDICATED THAT "1938 ARRANGEMENT . . .
APPEARS TO HAVE BEEN NULLIFIED" AND SUGGESTED THAT IT BE
REMOVED FROM TIF, WHICH IT WAS. HOWEVER, THIS OPINION
WAS REVERSED IN MAY, 1973, AND 1938 AGREEMENT HAS BEEN
LISTED IN TIF SINCE THAT DATE.

7. IF FSFA AGREES THAT '38 EXCHANGE OF NOTES STILL
BINDING, EMBASSY SHOULD QUIETLY GO ALONG WITH THAT VIEW
SINCE PROCEDURE PROPOSED IN 1970 IS SLIGHTLY MORE
RESTRICTIVE THAN THAT OF '38. LATER VERSION REQUIRES
NOTIFICATION TO APPROPRIATE AUTHORITY WHEN DEPOSITION OF
NON-USC IS TAKEN BY CONOFF.

8. PLEASE INFORM DEPT OF ACTION TAKEN. ROBINSON

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